



IN THE

Supreme Court of the United States

October Term, 1976

No.

26-1317

CHARLES MERRILL MOUNT,

Plaintiff,

v.

THE BOSTON ATHENAEUM,

Defendant.

PETITIONER'S REPLY BRIEF

CHARLES MERRILL MOUNT
Plaintiff Pro Se
230 Beach 146 Street
Neponsit, New York 11694
(212) 945-1279

(6313)

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PETITIONER'S REPLY BRIEF

INTRODUCTION

Compelling reason exists why the court should exercise its established discretion to review this matter. Upon

it depends whether ever again a scholar in this country can be safe from the proved means of destroying his honorable career here employed - the unscrupulous and unlawful use of deliberate or hallucinatory libels, and allegations of criminal acts, directed at an obscure award-winning scholar by an unstable, uneducated, self-appointed "colleague". The present notorious matter is surely the greatest hoax ever perpetrated upon the scholarly community. Were the Supreme Court to leave such flagrant abuse unchecked, a proven path to destroy every esteemed scholar would be declared open. Endless repetitions must henceforth decimate learning until it rested in the hands of those able to invent the biggest lies and

unscrupulously feed them to newspapers. At stake here is not one scholar, however significant his little contribution, but the sanctity and validity of scholarship as a pursuit, and the human capacity to push forward the frontiers of understanding.

RESPONDENT'S MEMORANDUM
OPPOSING CERTIORARI

As was previously the circumstance before the District Court and Circuit Court, Respondent is unable to deny the facts of his world-wide hoax, nor substantiate the allegations of criminal acts flung at plaintiff across the front-pages of newspapers. He cannot deny that the party responsible for these hallucinations,

David K.M. McKibbin, is probably insane. Reality is an embarrassment to Respondent, who prefers not to notice. Respondent's Memorandum instead attempts to persuade this august body to approve his squalid transactions on the technicality "that petitioner's application for a writ of certiorari is out of time and should be denied." No other answer is made.

PETITIONER'S REPLY

The facts, already made known to the court through correspondence between Petitioner and the Clerk, and hereto annexed as APPENDICES A, B, C, and D, are that in good time on February 27, 1976, Petitioner filed Notice of Appeal to the United States

Supreme Court from the Order entered in the First Circuit on February 25, 1976. Respondent fails to mention this Notice of Appeal, filed two days after the Order, and its timeliness cannot be disputed. Notice of Appeal satisfies the requirements for timeliness of Title 28, Section 2102(c), which states:

Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. (emphasis supplied)

The Clerk of the Court of Appeals for the First Circuit on March 2, 1976, forwarded a certified copy of Petitioner's Notice of Appeal to Michael Rodak, Esquire, Clerk of the United States Supreme Court,

together with covering letter herewith annexed as APPENDIX A. This letter ends: "Will you kindly acknowledge receipt of the above on the enclosed copy of this letter." As a pro se petitioner, for nine years deprived of earned income through operation of the libels complained of, petitioner surely had every right to believe that he had satisfied the requirements of Title 28, Section 2101(c), by having "applied for" Appeal by Certiorari to the Supreme Court within the 90 days stipulated by statute.

At the moment Petitioner "applied for" review by this court he was impoverished, his mother blind, his father and aunt at death's door, and he was daily occupied to provide food and care for his

twelve-year-old son, whom, like himself, in these horrendous domestic circumstances had been abandoned by his mother. April 26, 1976, Petitioner's aunt died, and, following her funeral, his father was transported by ambulance to hospital, where, on May 29, he too passed away. These heavy burdens of family responsibility made all other matters beyond Petitioner's capacity. Through all the anxieties and deprivations of this period Petitioner relied upon the firm belief that he had satisfied statutory provisions to safeguard his Petition to the United States Supreme Court. Prior law supports this belief, for the act of March 3, 1891, purposely allowed one year for taking the appeal, and Matton Steamboat Co. v. Murphy,

N.Y. 1943, 63 S.Ct. 1126, 319 U.S. 412, 87 L.Ed. 1483, turns upon such "application" as Petitioner had made by filing the acknowledged Notice of Appeal. Petitioner's omission, during this same difficult period, to apply for an extension of time arises from his pro se inexperience, his confidence that all statutory requirements already were satisfied, and that in his letter dated February 9, 1977 (APPENDIX C) Edward C. Schade, Assistant Clerk, relieved Petitioner by stating the court's willingness to accept the petition: "However, this office would docket your petition for writ of certiorari with a notation as to its untimely receipt." To pro se Petitioner this read as though it was assurance of his day in court.

THE COURT HAS DISCRETION TO REVIEW

Much thought has been given the question of timeliness. This present matter, wherein a pro se petitioner believed himself to have satisfied statutory requirements by filing his Notice of Appeal, which Notice of Appeal was acknowledged by the Circuit Court and tendered in certified copy to the Supreme Court, is consistent with enlightened thought. Professor Charles Alan Wright states in his Handbook of the Law of Federal Courts (West Publishing Co., St. Paul, 1970): "The time limits for seeking Supreme Court review have commonly been thought to be jurisdictional, though it has been argued persuasively that review should

not be barred if the delay was wholly caused by circumstances entirely beyond the applicant's control." Teague v. Regional Commissioner of Customs, 1969, 89 S.Ct. 1457, 1460-1463, 394 U.S. 977, 981, 984, 22 L.Ed. 2d 756. Significantly, Professor Wright finds that lack of timeliness is no bar. "The court may dismiss an appeal if it is not docketed within the time allowed by the rules, but it is not required to do so and may overlook the defect if it chooses." Johnson v. Florida, 1968, 88 S.Ct. 1713, 1714 n, 391 U.S. 596, 598 n, 20 L.Ed. 2d 838.

ARGUMENT

Compelling reason exists why the

discretion of the court should be exercised to review this matter, wherein a pro se petitioner believed himself to have satisfied the statutory requirements of timeliness, and, if he did not, "the delay was wholly caused by circumstances entirely beyond the applicant's control." An over-riding national interest requires this. Were this court to give even tacit approval to the destruction of honorable scholarly careers through the unlawful means admittedly employed by the Respondent herein, the sanctity and validity of scholarship as a pursuit must disappear and learning must be left to those unstable persons able to hoax the nation by the biggest lies unscrupulously spread to newspapers.

CONCLUSION

The court should exercise its established discretion to "overlook the defect" if one exists.

Dated: Neponsit, Queens County, N.Y.
April 28, 1977

Respectfully submitted,

CHARLES MERRILL MOUNT
Petitioner Pro Se

APPENDIX A

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

DANA H. GALLUP 1602 John W. McCormack
CLERK Post Office and Courthouse
 Boston, Mass. 02109
 (617) 223-2888

March 2, 1976

Michael Rodak, Esquire
Clerk, U.S. Supreme Court
Supreme Court Building
Washington, D. C. 20554

No. 75-1334. Mount v. The Boston
Athenaeum

Dear Mr. Rodak:

Enclosed is a copy of a document captioned notice of appeal. Without passing upon the propriety of filing a notice of appeal, I enclose a certified copy of that document.

Will you kindly acknowledge receipt of the above on the enclosed copy of this letter.

Sincerely yours,

/s/ Dana H. Gallup
Clerk.

DHG:gvc
Enclosure

cc: Mr. Charles M. Mount
230 Beach 146 Street
Neponsit, New York 11694

Robert D. Canty, Esquire
82 Devonshire Street
Boston, Massachusetts 02109

APPENDIX B

Charles M. Mount
230 Beach 146 Street
Neponsit, New York, 11694

January 21, 1977

The Clerk
Supreme Court of the United States
Washington, D.C., 20543

Dear Sir,

February 27, 1976 I filed Notice of Appeal to the United States Supreme Court from the Order of the Court of Appeals for the First Circuit entered on the 25 of February. At that time I still suffered from a lengthy illness and my pre-occupation was increased during the year by the twin deaths of my father and aunt. I now write in haste to enquire of you the very latest date on which my petition for writ of certiorari could be filed, and whether, in view of the extraordinary circumstances outlined above, there is any provision in the rules for an extension of time.

My good friend the attorney Nathan Korn, a Member of the Bar in both New York and Massachusetts, whom also has been admitted to practice before the United States Supreme Court, has taken an interest in my affairs and there is some possibility that he may wish to present the writ in my behalf. Relations between Mr. Korn and myself are informal. He asks me to

enquire whether his intervention in any way would be hampered by the fact that previously I acted in this matter pro se and that my Appeal to the First Circuit was conducted in forma pauperis.

Sincerely,

Charles M. Mount

cc: Robert D. Canty
Nathan Korn.

APPENDIX C

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

February 9, 1977

Mr. Charles M. Mount
230 Beach 146 Street
Neponsit, New York 11694

Dear Mr. Mount:

You had until May 25, 1976 in which to file an appeal or a petition for writ of certiorari to this Court. You may not obtain an extension of time at the present due to the expiration of time.

However, this office would docket your petition for writ of certiorari with a notation as to its untimely receipt.

Very truly yours,

MICHAEL RODAK, JR., Clerk

By /s/ Edward C. Schade

Edward C. Schade,
Assistant Clerk

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APPENDIX D

Charles M. Mount
230 Beach 146 Street
Neponsit, New York, 11694

March 21, 1977

Mr. Edward C. Schade
Assistant Clerk
Supreme Court of the United States
Washington, D.C., 20543

Dear Mr. Schade,

In conformity with the terms of your letter dated February 9 the Counsel Press herewith forwards to you in my behalf forty copies of my petition for writ of certiorari and a bank check for one hundred dollars (\$100.) as filing fee. Because of the short time available to us the attorney who will argue this case, Nathan Korn, has sought to make use of my greater familiarity with this matter by asking me to draft the petition myself. He has read it through in draft form.

Please permit me to stress once more that tardiness in filing this petition arises from unfortunate circumstances. Last April 26 my aunt died, followed within a month by my father. One whole side of my family was extinguished. Problems thrust on me were made more difficult by being left to care for my aged and nearly blind mother. For many months there was no hope I could give attention to anything else, but, also, it was in

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the back of my mind that having filed timely notice of appeal with the Circuit Court I would have a year in which to present this petition as in the state courts where my appeals previously were lodged.

Sincerely,

cc. Nathan Korn

/s/ Charles M. Mount